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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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9 ISIDRO ROMERO, No. C 07-06382 TEH (PR)
10 Petitioner, ORDER TO SHOW CAUSE
11 vs.
12 ROBERT L. AYERS, JR., Warden,
13 Respondent.

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15 Petitioner, a California state inmate at San Quentin State Prison, filed a pro se
16 petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the March
17 7, 2007, decision of the California Board of Parole Hearings (“BPH”) to deny him parole.
18 Petitioner has paid the filing fee. This order directs Respondent to show cause why the
19 petition should not be granted.

20 **BACKGROUND**

21 According to the petition and the attachments thereto, Petitioner was convicted in
22 1985 in the Superior Court of the State of California in and for the County of Orange of
23 second degree murder with use of a deadly weapon and was sentenced to a term of
24 sixteen years-to-life.

25 Petitioner challenges the BPH’s decision finding him unsuitable for parole after his
26 subsequent parole consideration hearing on March 7, 2007. Petitioner filed a state
27 petition for writ of habeas corpus in the Orange County Superior Court, which denied the
28 petition on August 10, 2007. Pet. Ex. D. It appears that after the Court of Appeal denied

1 relief, Petitioner sought review in the California Supreme Court, which denied the
2 petition for review on November 28, 2007. Pet. Ex. E.

3 **DISCUSSION**

4 A. Standard of Review

5 The Court may entertain a petition for a writ of habeas corpus “in behalf of a
6 person in custody pursuant to the judgment of a State court only on the ground that he is
7 in custody in violation of the Constitution or laws or treaties of the United States.” 28
8 U.S.C. § 2254(a).

9 It shall “award the writ or issue an order directing the Respondent to show cause
10 why the writ should not be granted, unless it appears from the application that the
11 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

12 B. Legal Claims

13 Petitioner seeks federal habeas corpus relief from the BPH’s decision finding him
14 not suitable for parole on the grounds that (1) the BPH violated his due process rights by
15 denying parole without some evidence that Petitioner poses a current threat to public
16 safety, and (2) the BPH’s decision denying parole was arbitrary and capricious. Liberally
17 construed, Petitioner’s claims appear colorable under § 2254 and merit an answer from
18 Respondent. See Biggs v. Terhune, 334 F.3d 910, 914-15 (9th Cir. 2003) (finding that
19 initial refusal to set parole date for prisoner with fifteen-to-life sentence implicated
20 prisoner’s liberty interest in release on parole which cannot be denied without adequate
21 procedural due process protections).

22 **CONCLUSION**

23 For the foregoing reasons and for good cause shown,

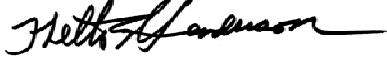
24 1. The Clerk shall serve by certified mail a copy of this order and the petition
25 and all attachments thereto on Respondent and Respondent’s attorney, the Attorney
26 General of the State of California. The Clerk also shall serve a copy of this order on
27 Petitioner.

1 2. Respondent shall file with the Court and serve on Petitioner, **within sixty**
2 **(60) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of
3 the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus
4 should not be issued. Respondent shall file with the answer and serve on Petitioner a
5 copy of all portions of the state trial record that have been transcribed previously and that
6 are relevant to a determination of the issues presented by the petition.

7 3. If Petitioner wishes to respond to the answer, he shall do so by filing a
8 traverse with the Court and serving it on Respondent **within thirty (30) days** of his
9 receipt of the answer.

10 4. Petitioner is reminded that all communications with the Court must be
11 served on Respondent by mailing a true copy of the document to Respondent's counsel.
12 Petitioner must also keep the Court and all parties informed of any change of address.
13 SO ORDERED.

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15 DATED: 07/01/08



THELTON E. HENDERSON
United States District Judge

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